IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.692 and 693 of 2007

Commissioner of Income-tax-III,
Chennai. ..Appellant in both the T.C.(A)s.

Vs.

Neyveli Lignite Corporation Ltd.,
Corporate Office Block 1,
Neyveli. ..Respondent in both the T.C.(A)s.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'B', Chennai in I.T.A. Nos.1763 & 1764(Mds)/2004 dated 07.06.2005 for the assessment years 1999-2000 and 2000-2001 against C No.3033 (36) /III/ 2003-2004 and C.No.3033 (37)/ III/2003-2004 dt.20.04.2004 on the file of the Commissioner of Income Tax, Chennai III against PAN No.GI No.AAACN 1121C/NE/65 on the file of Asst.Commissioner of Income Tax Company Circle IV (4) Chennai -34 dated 19.3.2002.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

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JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'B', Chennai in I.T.A. Nos.1763 & 1764(Mds)/2004 dated 07.06.2005, raising the following common substantial question of law:-

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> *"Whether in the facts and circumstances of the case, the Tribunal was right in holding that for the purpose of computation of limitation to pass order of revision by the Commissioner under section 263, the date of dispatch of the order had to be taken into account and setting aside the revision proceedings of the Commissioner of Income Tax under section 263?"*

2. The present tax cases are filed against a Public Sector Undertaking. When the matter came up on 18.06.2007, the Standing Counsel appearing for the Revenue requested for adjournment to find out whether the Revenue had obtained clearance from the High Powered Committee for prosecuting the present appeals. Hence the matter was adjourned and taken up today. Even today, the counsel is unable to state whether the Revenue has filed necessary application for obtaining clearance from the High Powered Committee, or not.

3. The Supreme Court, in the case of Oil & Natural Gas Commission Vs. CCE [1995] Suppl 4 SCC 541, held that when there is a dispute between a Government Department and a Public Sector Undertaking, the matter should be referred to the High Powered Committee for clearance. Further it was also held that no litigation shall come to the Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. In the case of Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another [2004] 267 ITR 647, the Supreme Court held as follows:-

> "Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. The majority of such cases pertain to Government Departments and/or public sector undertakings. As is stated in *Chief Conservator of Forests'* case [2003] 3 SCC 472 it was not contemplated by the framers of the Constitution or the Civil Procedure Code that two departments of a State or Union of India and/or a department of the Government and a public sector undertaking fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable

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wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this court is not, as suggested by Mr.Andhyarujina, only to conciliate between Government Departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High Powered Committee. In such cases, there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/ public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/ public sector undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done.

In this case this is absolutely what has happened. The appellants wanted to approach the court only against a show cause notice. It is settled law that

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against a show cause notice litigation should not be encouraged. The decision of the High Powered Committee, set out hereinabove, merely emphasizes the well settled position. It is an eminently fair and correct decision. The purpose of the decision was to prevent frivolous litigation. No right of the appellants is being affected. It has been clarified that the appellants could move a court of law against an appealable order. By not maintaining discipline and abiding by the decision the appellants have wasted public money and time of the courts. The clarificatory order, relied on upon by Mr.Andhyarujina, clarifies in paragraph 5 as to what is to happen if clearance is not given by the Committee. It is set out that in the absence of clearance the proceedings must not be proceeded with. This position is further clarified in *Chief Conservator of Forests'* case [2003] 3 SCC 472 where again this court has held that the decision taken by such a Committee is binding on all Departments concerned and it is the stand of the Government.

In view of this settled law, which is binding on us, we hold that as clearance has not been given to the appellants these proceedings cannot be proceeded with. The High Court was wrong in dealing with the merits of the matter. We, therefore, do not examine whether the High Court was right on the merits. The appeal accordingly stands disposed of with no order as to costs."

Applying the above principles, the present tax cases filed by the Revenue are not maintainable. Accordingly, the tax cases are dismissed. Consequently, M.P.No.1 of 2007 in T.C.(A) No.693 of 2007 is closed. No costs.

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4. However, if the Revenue obtains clearance from the High Powered Committee, the Revenue is at liberty to move the matter to this Court for reviving the above tax cases.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

km

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench 'B',
   Chennai.

2. The Commissioner of Income-tax,
   Chennai III, Chennai.

3. The Income-tax Officer (HQ),
   Chennai III, Chennai.

4. The Assistant Commissioner of Income-tax,
   Company Circle IV(4), Chennai-34.

+1cc to M/s.Pushya Sitaraman, Advocate Sr 39872

MBS (CO)
km/18.7.

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